

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #03	CCRB Case #: 201907371	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/05/2019 1:10 AM	Location of Incident: 118th Street between 5th Avenue and Lenox Avenue	Precinct: 25	18 Mo. SOL 1/5/2021	EO SOL 8/22/2021	
Date/Time CV Reported Mon, 08/12/2019 2:00 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 08/20/2019 8:42 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Qurban Fariad	1717	953847	025 DET
2. POM Donovan Bunch	25731	957408	ESU CAN
3. POM Taylor Young	31898	955683	025 DET
4. SGT Ramon Reyes	03998	947395	PBMN SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Donovan Bunch	Abuse: Police Officer Donovan Bunch frisked § 87(2)(b)	
B.POM Donovan Bunch	Abuse: Police Officer Donovan Bunch searched § 87(2)(b)	
C.SGT Ramon Reyes	Abuse: Sergeant Ramon Reyes frisked § 87(2)(b)	
D.SGT Ramon Reyes	Abuse: Sergeant Ramon Reyes searched § 87(2)(b)	
E.POM Donovan Bunch	Abuse: Police Officer Donovan Bunch searched the vehicle in which § 87(2)(b) was an occupant.	
F.POM Qurban Fariad	Abuse: Police Officer Qurban Fariad searched the vehicle in which § 87(2)(b) was an occupant.	
G.POM Taylor Young	Abuse: Police Officer Taylor Young searched the vehicle in which § 87(2)(b) was an occupant.	
H.SGT Ramon Reyes	Abuse: Sergeant Ramon Reyes searched the vehicle in which § 87(2)(b) was an occupant.	
I.SGT Ramon Reyes	Discourtesy: Sergeant Ramon Reyes spoke discourteously to § 87(2)(b)	
J.POM Donovan Bunch	Force: Police Officer Donovan Bunch used physical force against § 87(2)(b)	
K.POM Donovan Bunch	Abuse: Police Officer Donovan Bunch searched § 87(2)(b)	
L.SGT Ramon Reyes	Abuse: Sergeant Ramon Reyes searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On August 12, 2019, § 87(2)(b) filed this complaint during his interview for CCRB case § 87(2)(b) on behalf of himself and § 87(2)(b).

On July 5, 2019, at approximately 1:10 AM, PO Donovan Bunch, PO Qurban Fariad, PO Taylor Young, and Sgt. Ramon Reyes, who were assigned to the 25th Precinct at the time, stopped § 87(2)(b) vehicle on 118th Street between 5th Avenue and Lennox Avenue in Manhattan after allegedly previously seeing § 87(2)(b) vehicle on Pleasant Avenue shortly beforehand. The officers initiated the stop either because of § 87(2)(b) tinted windows or on suspicion of § 87(2)(b) having a police scanner in his car. § 87(2)(b) and their children, ages nine, four, and one, were in the vehicle with § 87(2)(b). PO Bunch instructed § 87(2)(b) to exit his vehicle and frisked and searched § 87(2)(b) pants pockets while Sgt. Reyes supervised his activities (**Allegations A - D, Abuse of Authority:** § 87(2)(g)). PO Bunch, PO Fariad, and PO Young searched § 87(2)(b) vehicle. Sgt. Reyes supervised their activities (**Allegations E - H, Abuse of Authority:** § 87(2)(g)). § 87(2)(b) remained with Sgt. Reyes, who made several discourteous statements towards § 87(2)(b) including, "I don't give a shit if you got your phone," and "I don't give a shit, alright. I saw the fucking plate," (**Allegation I, Discourtesy:** § 87(2)(g)). PO Bunch then spoke with § 87(2)(b) and allegedly hit his arm while telling him to stop moving (**Allegation J, Force:** § 87(2)(g)). PO Fariad arrested § 87(2)(b) and charged him with criminal impersonation in the first degree and reckless endangerment in the second degree. PO Bunch then searched § 87(2)(b) purse. Sgt. Reyes supervised his activities (**Allegation K and L, Abuse of Authority:** § 87(2)(g), § 87(4-b)).

The investigation obtained BWC footage from PO Bunch, PO Fariad, Sgt. Reyes, and PO Young.

All of the officers were assigned to the 25th Precinct at the time of the incident but have since been reassigned. PO Bunch is now assigned to the Emergency Services Canine Unit, PO Fariad and PO Young are assigned to the 25th Precinct Detective Squad, and Sgt. Reyes is assigned to Patrol Borough Manhattan North's Specialized Unit.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Donovan Bunch frisked § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Donovan Bunch searched § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Ramon Reyes frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Sergeant Ramon Reyes searched § 87(2)(b)

It is undisputed that officers stopped § 87(2)(b) vehicle on 118th Street between 5th Avenue and Lenox Avenue in Manhattan. It is also undisputed that after § 87(2)(b) exited the vehicle, PO Bunch frisked and searched his pants pockets.

§ 87(2)(b) did not testify to these allegations. Allegations A and B are being pleaded after they were captured on PO Fariad's BWC video. The investigation is not pleading a vehicle stop in this case given that § 87(2)(b) was ultimately arrested as a result of the stop. Allegations C and D are being pleaded against Sgt. Reyes since he was on the scene in supervisory capacity and oversaw the actions of his officers.

§ 87(2)(b) testified that he was driving his vehicle in East Harlem with his girlfriend § 87(2)(b) in the passenger's seat and his children in the backseat [BR 01]. He had been driving around the area for some time as he looked for a parking spot. At 5th Avenue and East 118th Street, § 87(2)(b) saw police officers and moved his vehicle out of the way so that they could pass. § 87(2)(b) slowed down when he saw several officers standing in the street. § 87(2)(b) heard someone say, "Hey, stop

that car.” Officers, including PO Fariad, PO Bunch, PO Young, and Sgt. Reyes stopped § 87(2)(b) vehicle on 118th Street between 5th Avenue and Lennox Avenue. One officer told § 87(2)(b) that he was being stopped because of his tinted windows and told him to pull over. § 87(2)(b) noted that he recognized several of the officers on scene because they were anti-crime officers who had repeatedly stopped § 87(2)(b) vehicle since May of that year. Sgt. Reyes instructed § 87(2)(b) to exit his vehicle, and § 87(2)(b) complied. Sgt. Reyes told § 87(2)(b) to stand at the rear of the vehicle and said to § 87(2)(b) “We just saw you at 120th Street, what are you doing over here? Do you have a police scanner?” § 87(2)(b) stated that he did not. § 87(2)(b) noted in his CCRB interview that his car was previously a police car and he bought it at a police auction.

In her phone statement, § 87(2)(b) stated that she and § 87(2)(b) were looking for parking spaces near Madison and 115th Street and were driving around the area [BR 02]. § 87(2)(b) saw what appeared to be a blockade of police vehicles on Lennox Avenue. On 118th Street, several police vehicles were on the street but were letting drivers pass by. § 87(2)(b) estimated that there were at least five police vehicles. Someone behind § 87(2)(b) car said, “Pull that vehicle over.” One of the officers approached the car and told § 87(2)(b) to step out. § 87(2)(b) asked why he was being pulled over, but § 87(2)(b) did not hear the rest of the conversation. Officers then took § 87(2)(b) to the rear of the vehicle. § 87(2)(b) was ultimately uncooperative with the investigation [BR 35].

PO Bunch testified that prior to the incident, he and his partners PO Young and PO Fariad had been in East Harlem on Pleasant Avenue conducting a routine patrol [BR 11, 18]. The officers were stationary in their vehicle and were monitoring the area. PO Bunch did not recall whether the officers had said over the radio that they were at the location. PO Bunch did not recall how long they had been at the location when he observed an unmarked police vehicle with tinted windows which he estimated blocked approximately 70% of light, making them completely blacked out and impossible to see inside. PO Bunch was unable to see whether there were police lights or any other police equipment inside the vehicle. PO Bunch also noted that the body of the car resembled an unmarked police vehicle, as the sides were pushed out in a way that suggested it had armor or the capacity to hold armor. PO Bunch did not recall the make and model of the vehicle but noted that the police department only uses certain types of vehicles and that the vehicle was one of those models. One of the officers in the vehicle asked who was in the unmarked car, and another responded that he recognized the car and knew that it belonged to a civilian he had seen in the area before, later identified as § 87(2)(b). PO Bunch was aware that decommissioned police vehicles are sold at public auctions. The officers did not interact with § 87(2)(b) at the time.

PO Bunch further testified that shortly after seeing § 87(2)(b) vehicle, a call went over the radio regarding officers who needed assistance on 118th Street between Lennox Avenue and 5th Avenue. PO Bunch did not recall how much time had elapsed between when he saw § 87(2)(b) vehicle and when the request went over the radio, noting that it could have been seconds or minutes. Upon arriving at the location, PO Bunch saw a lot of people on the street and heard people yelling, although he did not recall what they were saying or how many people were there, as well as several uniformed and plainclothes officers. PO Bunch observed § 87(2)(b) vehicle turning from Lennox Avenue onto 118th Street, and PO Bunch and his partners followed. At some point he and his partners exited their vehicle, and he believed that the driver may have stayed with the vehicle, but he was not sure. Several officers who were on foot on the street began moving out of the way to allow § 87(2)(b) vehicle to pass, seemingly believing that he was also a police officer responding to the call because of his vehicle. PO Bunch noted that traffic onto 118th Street had been unintentionally blocked off by police vehicles. He did not recall whether the street was still open to other traffic. He did not recall whether other civilian vehicles were trying to get onto 118th Street at that time. Someone yelled that § 87(2)(b) car was not a police vehicle and said, “Stop that car,” although PO Bunch did not recall who made the statement. PO Bunch did not recall whether there was any discussion among his own unit regarding what their next steps were or what they were aiming to accomplish by stopping § 87(2)(b) but noted that they were trying to figure out what was going on and why § 87(2)(b) was at the location.

PO Bunch did not recall whether § 87(2)(b) stopped his vehicle immediately when officers initiated the stop nor did he recall whether officers told § 87(2)(b) to stop his vehicle multiple times. § 87(2)(b) was not driving at a high rate of speed when officers stopped his vehicle. PO Bunch did not recall whether § 87(2)(b) increased his speed after officers initiated the stop. PO Bunch did not recall whether § 87(2)(b) came close to a collision with any vehicles or individuals on scene. He did not recall whether any other officers, including Sgt. Reyes, had informed him that § 87(2)(b) had almost hit them with his vehicle [BR 18]. § 87(2)(b) stopped his vehicle and officers instructed him to roll down his windows, at which point PO Bunch saw § 87(2)(b) and § 87(2)(b) children in the vehicle. PO Bunch believed that an officer from his own unit likely instructed § 87(2)(b) to get out of the vehicle but did not recall whether that was the case or who issued the instruction. PO Bunch did not recall which officer approached § 87(2)(b) first or spoke to him first. He was unable to see whether there was any movement inside § 87(2)(b) vehicle as officers approached because the windows were still up. PO Bunch noted that § 87(2)(b) was instructed to get out of the vehicle for safety reasons. PO Bunch also noted that § 87(2)(b) arrived at the location at roughly the same time that PO Bunch's unit did and that he may have sped towards the location.

Later in his CCRB interview, PO Bunch stated that he saw police lights mounted inside the rear windshield of § 87(2)(b) vehicle, although he did not recall at what point he saw them but noted that he would have visually scanned the vehicle upon approaching. PO Bunch did not recall whether the rear windshield was also tinted but noted that he did not see the lights from outside the car. § 87(2)(b) did not turn on the lights at any point during the incident. PO Bunch did not recall where § 87(2)(b) was still inside the vehicle when he saw the lights but noted that he saw them before § 87(2)(b) was arrested. PO Bunch noted that the mere possession of such lights constitutes police impersonation. He also added that § 87(2)(b) was wearing a NYPD Police Benevolent Association t-shirt at the time of the incident. PO Bunch initially testified that he did not recall whether he frisked or searched § 87(2)(b) pockets.

PO Bunch's BWC video does not show these allegations, but the investigator showed PO Bunch an excerpt from PO Fariad's BWC video which shows PO Bunch frisking and searching § 87(2)(b) pocket [BR 05]. PO Fariad's BWC video shows PO Fariad approaching § 87(2)(b) vehicle with other officers in plainclothes (IA 41). At 32 seconds, PO Bunch, who is standing at the front driver's side window says, "What are you doing over here?" and instructs § 87(2)(b) to pull over the vehicle. § 87(2)(b) complies. At 55 seconds, the PO Bunch instructs § 87(2)(b) to step out of the vehicle, and § 87(2)(b) complies while objecting verbally. At 1:05 minutes, PO Bunch appears to pat § 87(2)(b) pants pockets. § 87(2)(b) says, "When you're done, I want your shield number and your precinct." PO Bunch verbally provides his shield number. At 1:15 minutes, PO Bunch appears to enter § 87(2)(b) right pants pocket, from which he removes an object, briefly looks at it, and places it back into § 87(2)(b) pocket. PO Bunch then says, "We just saw you on the other side of the 25, what are you doing over here? You got a scanner in your car?" § 87(2)(b) states that he lives in the area.

After having viewed the excerpt of PO Fariad's video, PO Bunch noted that he saw himself frisk and search § 87(2)(b) pocket. PO Bunch testified that he did not recall patting § 87(2)(b) pockets but noted that he would have been looking for weapons. PO Bunch did not recall whether he saw any shapes in § 87(2)(b) clothing that indicated he may have had weapons nor did he recall what specific weapons he believed § 87(2)(b) may have had [BR 11]. Regarding the search, PO Bunch stated that he could not distinguish the object he removed and did not independently recall what the object was [BR 18]. PO Bunch noted that he did not recall what he felt when he patted § 87(2)(b) pocket prior to entering the pocket. PO Bunch also noted that he is trained to pat and squeeze an individual's clothing if there is a possibility of the individual having weapons on them during a stop where there is a reasonable suspicion of criminality. PO Bunch noted that if the object is not soft or is not an easily identifiable innocuous object, he is trained to remove the object from the individual's person and confirm that it is not a weapon. PO Bunch confirmed that, in § 87(2)(b) case, he did not recall what he felt in § 87(2)(b) pocket or what he believed was in § 87(2)(b) pocket before

removing the object. PO Bunch did not recall at what point the decision was made to arrest § 87(2)(b) and did not recall whether any officers informed him of when they had made the decision to arrest § 87(2)(b).

PO Fariad testified that he and his partners were patrolling the area of East 120th Street and Pleasant Avenue in Manhattan when he noticed a black unmarked vehicle, later identified as § 87(2)(b) vehicle, with tinted windows that looked like a police vehicle [BR 13]. PO Fariad did not recall if either he or his partner had put over the radio that they would be at 120th Street and Pleasant Avenue nor did he recall if any other officers did so. PO Fariad saw two features on the vehicle that were typically only present on police vehicles. First, there was a four- to five- inch circle on the trunk that usually serves as an antenna or radio. Second, there were holes in the exterior of the driver's side and passenger's side door panels where a police vehicle would typically have bulletproof panels installed. The window tints were too dark for PO Fariad to see the motorist. PO Fariad was not familiar with the vehicle from the area. The vehicle was driving around in circles; PO Fariad was uncertain how many times it did so but stated that he would see the vehicle every so often and had seen it more than once that night. Approximately five to 10 minutes later, PO Fariad received a radio call for 118th Street between Fifth Avenue and Lenox Avenue, which he believed may have been a call about a shooting at the location. His unit arrived at the location one to two minutes later and PO Fariad saw many officers and police vehicles. 118th Street was not closed off to traffic at the time. PO Fariad then saw that § 87(2)(b) vehicle was in front of him. He noted that since § 87(2)(b) had driven the seven or eight avenues to 118th Street in such a short time, he must have driven very quickly. PO Fariad did not recall if that was the only unmarked vehicle that was at the location. PO Fariad did not know how fast the vehicle was going. Since he believed it to be the same vehicle that he had seen on 120th Street, he put on his lights and sirens to pull it over. PO Fariad stated that the reason for stopping § 87(2)(b) vehicle was its tints. § 87(2)(b) began to pull over and then when PO Fariad tried to pull up behind him, § 87(2)(b) began to drive away. Until that point, PO Fariad was unsure if the vehicle was another police vehicle responding to the job, although the missing bulletproof panels made him believe it was not. However, when § 87(2)(b) did not stop his vehicle, PO Fariad realized that it was not a police vehicle. When § 87(2)(b) kept driving, an officer stepped in front of him and he stopped. PO Fariad and his partners then exited their vehicle and approached § 87(2)(b) vehicle. Immediately upon approaching the vehicle, an officer told § 87(2)(b) to exit the vehicle and go to the rear. PO Fariad did not recall who told § 87(2)(b) to exit the vehicle and could not hear § 87(2)(b) response. PO Fariad did not recall officers patting § 87(2)(b) down when he stepped out of the vehicle and did not see any officers put their hands into § 87(2)(b) pockets. PO Fariad stated that § 87(2)(b) was asked to step out of his vehicle because there was already probable cause for his arrest due to reckless driving and reckless endangerment. PO Fariad specified that by § 87(2)(b) reckless driving he was referring to the fact that § 87(2)(b) almost hit an officer because he did not immediately stop. PO Fariad stated that § 87(2)(b) got very close to the officer, but he could not estimate in feet how close.

PO Young's testimony was consistent with that of PO Bunch and PO Fariad with the following exceptions and additions [BR 12]. PO Young added that the model of § 87(2)(b) vehicle and the style of hubcaps on the tires were consistent with that of unmarked police vehicles. PO Young was unable to estimate how much time had elapsed between the moment he saw § 87(2)(b) vehicle near Pleasant Avenue and when he responded to 118th Street. At the scene of the incident, PO Young observed § 87(2)(b) vehicle driving slowly down 118th Street. PO Young and PO Bunch stopped § 87(2)(b) vehicle, and PO Young believed they were doing so because of the dark tinted windows. PO Young yelled to a uniformed officer who was standing in the street to stop § 87(2)(b) car. The uniformed officer positioned himself in front of § 87(2)(b) vehicle and used his hands to signal to § 87(2)(b) to stop. The uniformed officer also verbally instructed § 87(2)(b) to stop. § 87(2)(b) opened his windows after PO Young approached his vehicle. One of the officers, whom PO Young did not recall, shined a flashlight into § 87(2)(b) vehicle, at which point PO Young observed police emergency lights in the back of the vehicle near the windshield as well as a camera attached to the

front windshield. PO Young also walked around § 87(2)(b) vehicle and saw more emergency lights in the front grill of the car. He did not recall whether any other officers mentioned seeing the lights in the grill or whether he informed anyone of what he observed. § 87(2)(b) stepped out of the vehicle, although PO Young did not recall who instructed him to do so. PO Young did not recall whether any officers frisked or searched § 87(2)(b) pockets. PO Young noted that he had not seen § 87(2)(b) attempt to take any police action, including stopping someone or talking to police on scene.

PO Young's BWC video also captures the outset of the stop [BR 08]. At five seconds, an unidentified officer is heard saying, "Driver, step out of the vehicle." At nine seconds, Sgt. Reyes leans down to the front passenger's side window and says, "We're pulling you over for the tints, sir, and by New York State law we can pull you out of the vehicle." Sgt. Reyes and PO Young move to the driver's side, where PO Bunch is seen patting § 87(2)(b) pants pockets. At 31 seconds, PO Bunch is heard saying, "You got a scanner in your car?" At 38 seconds, Sgt. Reyes grabs § 87(2)(b) arm and pulls him to the rear of the vehicle.

Sgt. Reyes' testimony was consistent with that of other officers with the following exceptions and additions [BR 15]. Sgt. Reyes noted that, at Pleasant Avenue, he saw § 87(2)(b) license plate and concluded that it was not a police vehicle, as he had stopped § 87(2)(b) vehicle on previous occasions when he had previously thought the car was an unmarked police vehicle. The request for assistance at 118th Street came seconds after Sgt. Reyes saw § 87(2)(b) vehicle at Pleasant Avenue. Sgt. Reyes' unit responded, using lights and sirens in transit, and arrived at the location less than one minute later. Sgt. Reyes did not recall how long he had been on scene when he saw § 87(2)(b) vehicle driving down 118th Street, which had been closed to traffic using a police vehicle to block cars from entering the one-way street. § 87(2)(b) was waving at officers, who moved their marked police vehicles to let him pass by and appeared to think he was also a police officer. § 87(2)(b) was about to reach the end of the block when Sgt. Reyes yelled out that he was not a police officer. Sgt. Reyes positioned himself in front of § 87(2)(b) car, put his hands up, and verbally told § 87(2)(b) to stop the car. § 87(2)(b) continued driving and accelerated, with his speed increasing to approximately 10-15 miles per hour. § 87(2)(b) nearly hit Sgt. Reyes, who moved aside to avoid the collision. § 87(2)(b) ultimately stopped because other officers blocked his path. As soon as § 87(2)(b) stopped, Sgt. Reyes immediately approached on the passenger's side. Sgt. Reyes did not recall whether § 87(2)(b) windows were up or down but noted that he opened the passenger's side door and told § 87(2)(b) to exit the vehicle. When Sgt. Reyes opened the vehicle door, he noted that there were emergency lights in both the rear and front windshields of the vehicle. He also saw § 87(2)(b) making movements with his hands in the car towards his own person but did not recall what part of his body § 87(2)(b) appeared to be reaching for. Sgt. Reyes noted that from the moment he approached the vehicle, his intention at the time was to arrest § 87(2)(b) as he had disobeyed orders to stop and drove recklessly and almost hit Sgt. Reyes. Sgt. Reyes did not recall whether he told any other officers that he intended to arrest § 87(2)(b) from the beginning of the interaction. Sgt. Reyes also noted that the only way § 87(2)(b) would have been able to get to the location as quickly as he did was by using the emergency lights in his car. Sgt. Reyes did not recall whether anyone frisked or searched § 87(2)(b) person when he exited the vehicle. Sgt. Reyes said, "Don't cuff him yet," out loud, but was not speaking to anyone in particular. Sgt. Reyes gave this instruction so that § 87(2)(b) would not be arrested in front of his children, who were in the car.

Sgt. Reyes' BWC video begins with him approaching the passenger's side of § 87(2)(b) vehicle as § 87(2)(b) appears to begin exiting [BR 07]. At 20 seconds, Sgt. Reyes moves to the driver's side, where PO Bunch is seen patting § 87(2)(b) pants pockets. Sgt. Reyes is not heard saying, "Don't cuff him yet," in the video.

The BWC footage is inconclusive as to whether the officers had any discussion amongst themselves about their intention to arrest § 87(2)(b) or when he was considered under arrest [BR 4 - 9].

PO Fariad prepared both the criminal complaint report and the arrest report for § 87(2)(b) arrest, and both documents had the same narrative [BR 03, 10]. Both of the reports stated that PO

Fariad observed § 87(2)(b) driving on 118th Street with excessive tints. Officers attempted to stop the vehicle and § 87(2)(b) attempted to flee the location, “causing [defendant to drive recklessly and causing substantial risk of injury to another person.” According to the property voucher associated with § 87(2)(b) arrest, officers seized the vehicle as well as a light bar and a siren control head [BR 42]. As per the property voucher, § 87(2)(b) was driving a black 2013 Ford Taurus with New York license plate § 87(2)(b).

NYPD Patrol Guide Procedure 212-11 notes that frisk is authorized when the member of the service reasonably suspects the person is armed and dangerous [BR 20]. This includes situations in which the officer reasonably suspects that the person has committed, is committing, or is about to commit a violent crime or when the officer observes something on the person that he reasonably suspects is a weapon. A police officer cannot frisk a bag or item of personal property unless the officer has a reasonable suspicion that the person is armed and dangerous and the bag or item could contain a weapon and is within the person’s reach. A search after a frisk is permitted when the officer places his hands inside a pocket or other interior portions of a person’s clothing or personal property to remove an object that the member felt during a frisk and reasonably suspects is a weapon or dangerous instrument.

People v Wylie, 244 AD2d 247 [1st Dept 1997] cites searches incident to lawful arrest as an exception allowing officers to search individuals without a warrant [BR 19]. In *People v Reid*, 24 N.Y.3d 615 (2014), an officer who had probable cause to arrest the civilian but did not intend to do so before conducting the search was not justified in searching a civilian; yet the subsequent search led to the civilian’s arrest [BR 45]. The case notes, “Because a search had to be incident to an actual arrest, not just to probable cause that might have led to an arrest but did not, a search of defendant was not incident to his arrest for Fourth Amendment purposes when the officer could have lawfully arrested him for DUI before conducting the search, but would not have arrested him if it had not been for the search.”

New York State Vehicle and Traffic Law (VTL) §375 states that no light, other than a white light, and no revolving, rotating, flashing, oscillating, or constantly moving white light shall be affixed to or displayed on any vehicle except for authorized emergency vehicles [BR 22].

New York State Penal Law §190.26 defines criminal impersonation in the first degree [BR 23]. A person is guilty of criminal impersonation in the second degree, a class E felony, when he pretends to be a public servant or wears or displays without authority, any uniform, badge or other insignia or facsimile thereof, by which such police officer or federal law enforcement officer is lawfully distinguished or expresses by his or her words or actions that he is acting with the approval or authority of any police department and acts with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon said pretense and in the course of such pretense commits or attempts to commit a felony.

New York State VTL §397 states that a person who is not a police officer acting pursuant to his special duties who equips a vehicle with a radio capable of receiving signals on frequencies allocated for police use is guilty of a misdemeanor punishable by a fine or imprisonment [BR 24].

According to NYPD Patrol Guide Procedure 202-18, anti-crime supervisors should supervise their officers’ performance and ensure that their officers are properly trained regarding their duties as described in the department directives [BR 46].

Although Sgt. Reyes and PO Fariad both stated that they intended to arrest § 87(2)(b) from the outset of the stop, neither recalled whether there was any discussion among officers regarding their intentions. Ultimately, PO Bunch was the officer who frisked and searched § 87(2)(b) and not Sgt. Reyes or PO Fariad, but he himself did not recall when the decision to arrest § 87(2)(b) was made. PO Bunch also did not recall whether any officers, including Sgt. Reyes, explicitly stated that § 87(2)(b) was going to be arrested. In addition, PO Bunch testified that he did not recall seeing the alleged reckless driving which ultimately provided the basis for § 87(2)(b) arrest. Finally, according to the BWC footage, PO Bunch frisked and searched § 87(2)(b) within a minute of the initiation of the stop.

§ 87(2)(g)

§ 87(2)(b) In fact, PO Bunch testified that he frisked § 87(2)(b) looking for weapons, but he could not articulate whether he saw any bulges on § 87(2)(b) person indicating that he had a weapon or what weapon he believed § 87(2)(b) might have had. PO Bunch was also unable to articulate what object he felt in § 87(2)(b) pocket during the frisk that led to him searching § 87(2)(b) pocket. While the subsequent search of the car led to § 87(2)(b) arrest and the officers recovered a light package and siren control device, evidence indicates that PO Bunch's frisk and search were conducted before § 87(2)(b) was handcuffed and was apparently under arrest for police impersonation and the officers were still conducting their investigation at the time § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Donovan Bunch searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (F) Abuse of Authority: Police Officer Qurban Fariad searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (G) Abuse of Authority: Police Officer Tavior Young searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (H) Abuse of Authority: Sergeant Ramon Reyes searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that after PO Bunch frisked and searched § 87(2)(b) Sgt. Reyes took § 87(2)(b) to the rear of the vehicle. It is also undisputed that while Sgt. Reyes remained in the rear of the vehicle with § 87(2)(b) PO Bunch, PO Fariad, and PO Young all searched some part § 87(2)(b) vehicle.

Allegation H is being pleaded against Sgt. Reyes since he was on the scene in supervisory capacity and oversaw the actions of his officers. § 87(2)(b) testified that as he and Sgt. Reyes stood at the rear of his vehicle, approximately five to six officers searched § 87(2)(b) car, including underneath the seats and the glove compartment [BR 01]. § 87(2)(b) children remained in the backseat. § 87(2)(b) heard an officer say, "Pop his trunk." § 87(2)(b) stated that the officers could not open his trunk, and the officer stated, "I feel like opening your trunk." The officers then searched § 87(2)(b) trunk.

§ 87(2)(b) stated over the phone that she remained in the backseat with her three children [BR 02]. Officers opened and searched the trunk and looked around the front seats. They also opened several compartments and shined their flashlights into them. The officers stated that they saw § 87(2)(b) vehicle elsewhere in the area, and § 87(2)(b) said they were looking for parking. One of the officers told § 87(2)(b) that they were going to arrest § 87(2)(b). Another officer said there was a light in the back of the car, and one asked if there was a scanner. § 87(2)(b) said she did not know what they were talking about.

PO Bunch initially testified that he did not recall searching § 87(2)(b) vehicle on scene and did not recall any other officers doing so [BR 11]. PO Bunch noted that since he was speaking with § 87(2)(b) he was not paying attention to what was happening with his vehicle.

The investigator showed PO Bunch an excerpt from his own BWC video from 0:00-1:07 minutes, which begins with PO Bunch searching the area around the driver's seat of § 87(2)(b) vehicle [BR 04] (IA 40). PO Bunch's BWC video begins with the search, and it is unclear what took place immediately beforehand. However, § 87(2)(b) had already exited the vehicle at the time. At 30 seconds, PO Bunch goes to the passenger's side of the vehicle to search the front passenger's seat as

well. PO Bunch did not recall searching those areas of the vehicle and did not recall what he was looking for. However, PO Bunch's BWC video also shows that he asks several times whether § 87(2)(b) has a police scanner in the vehicle. As previously noted, PO Bunch testified that he believed there was a police scanner inside of § 87(2)(b) vehicle due to how little time had elapsed between the call for assistance at the location and § 87(2)(b) arrival on scene after he was seen on Pleasant Avenue.

The investigator showed PO Bunch another excerpt from his own BWC footage from 2:34-2:57 minutes. The video showed that the trunk of § 87(2)(b) vehicle was opened. PO Bunch did not recall who opened the trunk. PO Bunch did not recall whether he searched the trunk of the car or whether there was any discussion among the officers regarding what they were looking for in the trunk.

PO Fariad initially testified that he did not recall officers searching the vehicle, nor did not recall assisting any officers in searching the vehicle [BR 13]. He did not see any officers search the trunk and did not see if PO Young or PO Bunch conducted any search of the vehicle or the trunk.

The investigator showed PO Fariad an excerpt from his own BWC video. Immediately before PO Fariad is seen searching the vehicle, PO Bunch appears to have already initiated his search of the vehicle, and § 87(2)(b) is seen arguing with officers at the rear of his vehicle. At 3:20 minutes, PO Fariad appears to look through the compartments on the passenger's side door and under the driver's seat [BR 05] (IA 41). PO Fariad also opens the center console in the front seat and puts his hand in it. PO Fariad then opens an opaque black plastic cup with a cover in the cupholder (5:15 minutes).

PO Fariad stated that he did not recall any discussion of entering § 87(2)(b) vehicle to look for anything. Regarding why he had searched the vehicle, PO Fariad stated that he had wanted to make sure that there was nothing § 87(2)(b) could grab. PO Fariad stated that there was no specific item he was looking for or that § 87(2)(b) could grab. Further, PO Fariad stated that he already had probable cause due to § 87(2)(b) reckless driving and reckless endangerment when he conducted the search and already knew at the time that § 87(2)(b) would be arrested but had not conveyed that to anyone.

PO Young initially testified that he did not recall whether any officers searched § 87(2)(b) vehicle [BR 12].

PO Young's BWC video shows that at 1:52 minutes, an unidentified officer is heard saying, "Let's pop the trunk," [BR 08]. Immediately beforehand, § 87(2)(b) is seen arguing with Sgt. Reyes at the rear of the vehicle. § 87(2)(b) asks, "Pop the trunk for what?" The officer replies, "Because I want to." At 2:45 minutes, a uniformed officer appears to open the trunk of the car with a key. PO Young shines a flashlight into the trunk, but it is unclear whether he searches it initially. At 3:14 minutes, PO Young moves several items of clothing and a plastic bag in the trunk of the car. PO Young then approaches the open driver's door, although it is unseen whether he enters the car at all.

After viewing his BWC video, PO Young testified that the trunk was open, although he was unaware of who opened it. PO Young looked into the trunk with his flashlight and moved several objects to conduct a safety check and to look for fireworks since it was the night of July 4. PO Young was unaware of whether anyone else searched the trunk of the car or any other parts of the vehicle. PO Young did not recall whether anyone had asked § 87(2)(b) permission before opening the trunk. PO Young added that he drove § 87(2)(b) vehicle to the 25th Precinct stationhouse after § 87(2)(b) arrest.

Sgt. Reyes did not recall whether any officers searched the vehicle, as he was preoccupied with speaking to § 87(2)(b) at the time [BR 15]. He did not recall whether he instructed officers to instruct § 87(2)(b) vehicle and did not recall hearing officers discuss searching § 87(2)(b) vehicle. Sgt. Reyes believed that other officers were securing § 87(2)(b) family at the time. Sgt. Reyes did not recall any discussion among officers regarding whether there was a police scanner in § 87(2)(b) vehicle.

Regarding the search, the criminal complaint report and arrest report by PO Fariad state that a search incident to lawful arrest revealed a light package in the rear of the vehicle "without

permission or authority to do so,” [BR 03, 10]. As previously noted, a light bar and siren control head were among the property seized from § 87(2)(b) car after his arrest [BR 42].

As previously noted, New York State VTL §397 states that a person who is not a police officer acting pursuant to his special duties who equips a vehicle with a radio capable of receiving signals on frequencies allocated for police use is guilty of a misdemeanor punishable by a fine or imprisonment [BR 24].

In *People v Blasich*, 73 NY2d 673 [1989], the court found that officers may search a vehicle, including the trunk and locked containers, if there is probable cause to believe that the car contains evidence of a crime [BR 25].

As per New York State CPL §70.10, reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it [BR 21].

The court in *People v Gokey*, 60 NY2d 309 [1983] found that a duffel bag that was within the immediate control or "grabbable area" of a suspect at the time of his arrest could not be subjected to a warrantless search incident to the arrest, unless the circumstances leading to the arrest supported a reasonable belief that the suspect could gain possession of a weapon or be able to destroy evidence located in the bag [BR 26].

As previously noted, NYPD Patrol Guide Procedure 212-11 states that reasonable suspicion exists when the information known to the member of the service would make an ordinarily prudent and cautious police officer under the circumstances believe that a felony or Penal Law misdemeanor has been, is being or is about to be committed [BR 20]. The officer must be able to articulate specific facts establishing justification for the stop and have an objective basis for suspecting the person stopped of criminal conduct.

As per *People v Adams*, 32 NY2d 451, 455 [1973], the legitimate objectives of a warrantless search incident to arrest are to permit the seizure of fruits, instrumentalities and other evidence of the crime for which the arrest is made in order to prevent its destruction or concealment; and removal of any weapons that the arrestee might seek to use to resist arrest or affect his escape [BR 41].

New York State Penal Law §270.00 states that any person who possesses or uses fireworks is guilty of a violation [BR 28].

According to NYPD Patrol Guide Procedure 202-18, anti-crime supervisors should supervise their officers' performance and ensure that their officers are properly trained regarding their duties as described in the department directives [BR 46].

PO Bunch testified that he did not recall what he was looking for in § 87(2)(b) vehicle during his search. However, based on the statements made during his BWC video, PO Bunch appears to have been searching for a police scanner in § 87(2)(b) vehicle, believing that § 87(2)(b) had a police scanner because he arrived quickly at the scene of the call for assistance. However, as previously noted, PO Bunch, Sgt. Reyes, and PO Young were all unable to estimate how much time had passed between the two sightings, and PO Fariad testified that approximately five to ten minutes had passed between the first sighting and the call for assistance at the second location. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Fariad provided two reasons for his search of the vehicle: to make sure there was nothing in § 87(2)(b) reachable areas and because he had probable cause to arrest § 87(2)(b) for reckless endangerment and intended to do so. However, PO Fariad also stated that he was not looking for any particular objects in § 87(2)(b) reachable area, and given that reasonable suspicion requires articulable, specific facts to justify the actions. § 87(2)(g)

§ 87(2)(g)

Secondly, although the criminal complaint report and arrest report referred to the search as

incident to § 87(2)(b) arrest, PO Fariad testified that the basis for the arrest at the time of the search was reckless endangerment based on § 87(2)(b) driving, and he was unable to articulate what specific evidence he was searching for related to this offense or what weapons he believed may be in the vehicle, as per *People v Adams*. § 87(2)(g)

Although an unidentified officer opened the trunk of § 87(2)(b) car, PO Young was the only officer to conduct a search, noting that he did so to search for fireworks given that it was July 4. As previously noted, a search of the trunk would require probable cause to believe that there is evidence of a crime in the vehicle. While possession of fireworks is a violation, PO Young provided no evidence to believe that § 87(2)(b) vehicle contained fireworks except that it was July 4th. § 87(2)(g)

Allegation (I) Discourtesy: Sergeant Ramon Reyes spoke discourteously to § 87(2)(b)

It is undisputed that Sgt. Reyes and § 87(2)(b) argued throughout the course of this incident, with both individuals using discourteous language throughout the interaction.

§ 87(2)(b) testified that after officers began searching his vehicle, he began to argue with them, and all of them used profanity against each other [BR 01]. § 87(2)(b) did not recall specific profanity used during the argument. One of the officers stated that § 87(2)(b) wished he was a police officer and was pretending to be one, which § 87(2)(b) denied.

§ 87(2)(b) did not state that she heard any officers using profanity [BR 02].

Sgt. Reyes noted that during his conversation with § 87(2)(b) he spoke discourteously several times, as he was reacting to § 87(2)(b) own use of profanity [BR 15]. Sgt. Reyes said to § 87(2)(b) “You said all this shit works,” because he was repeating what § 87(2)(b) had said to him regarding the equipment in the car.

Sgt. Reyes’ BWC video shows him using profanity several times throughout the incident while speaking to § 87(2)(b) [BR 07] (IA 43). At 31 seconds, PO Bunch is heard saying, “You got a scanner in your car?” At 35 seconds, Sgt. Reyes grabs § 87(2)(b) arm and pulls him to the rear of the vehicle, stating, “I don’t give a shit if you got your phone.” Sgt. Reyes stands behind § 87(2)(b) who faces the trunk of the car, as PO Bunch appears to search the vehicle near the driver’s seat. At 1:01 minutes, § 87(2)(b) asks why officers are checking his car. He also states that there are cameras recording “all over this car.” § 87(2)(b) then proceeds to argue with officers, including one unseen officer, identified as PO Young, who is heard saying, “Why are you rolling around trying to act like you’re police?” § 87(2)(b) denies that he is acting like a police officer but continues to argue with officers, including Sgt. Reyes. At 1:48 minutes, § 87(2)(b) states, “All this shit works.” Three gray cylinders, approximately three inches tall, are seen on the trunk of § 87(2)(b) car. At 2:10 minutes, Sgt. Reyes says, “We saw you by Wagner. We see you driving by. And now all of a sudden you’re over here on this side.” § 87(2)(b) says, “I live right there on fucking Madison Avenue,” to which Sgt. Reyes replies, “Alright, so then stop going by Wagner.” At 2:20 minutes, Sgt. Reyes says, “I don’t give a shit, alright. I saw the fucking plate.” A uniformed supervisor in a white shirt instructs § 87(2)(b) to move away from his vehicle. At 2:48 minutes, § 87(2)(b) is heard saying, “I didn’t even give you permission to check my fucking car.” At 4:05 minutes, § 87(2)(b) repeatedly says, “None of that shit works,” to which Sgt. Reyes replies, “So why are you saying it works?” § 87(2)(b) states that “the cameras work.” Sgt. Reyes says, “You said all this shit works.” § 87(2)(b) approaches the trunk of the vehicle and says, “This is tracking the car,” although he is out of frame and it is unclear whether he is gesturing to anything. § 87(2)(b) then says, “This works. That camera works. That’s it.” Sgt. Reyes replies, “And the light package? You’re not supposed to have a light package. You’re not the police. You’re not EMS.” § 87(2)(b) and Sgt. Reyes begin to argue again, with Sgt. Reyes saying, “I saw you

in Wagner in the projects five minutes ago, now you're here." § 87(2)(b) says at 4:30 minutes, "How'd you see me in the projects five minutes ago?" Sgt. Reyes replies, "Because you saw the fucking car."

Regarding the additional discourteous statements that Sgt. Reyes is heard using in his BWC video, Sgt. Reyes stated that he made these statements in reaction to § 87(2)(b) own demeanor and language during their conversation.

PO Bunch testified that he did not hear Sgt. Reyes use any profanity during the course of this incident [BR 11].

Both PO Fariad and PO Young testified that they did not hear § 87(2)(b) speak with Sgt. Reyes on scene before being arrested [BR 12, 13]. Neither PO Fariad nor PO Young heard Sgt. Reyes use any profanity when speaking to § 87(2)(b).

NYPD Patrol Guide Procedure 200-02 notes that officers must respect the dignity of each individual and render services with courtesy and civility [BR 29].

NYPD Disciplinary case #2017-17276 notes that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent confrontation [BR 30].

NYPD Disciplinary case #2015-15012 notes that discourteous language may be used by officers in the context of dynamic situations in which the officer is attempting to gain control or compliance from civilians. However, in this case, subsequent discourteous language by the officer was found to serve no legitimate purpose except to belittle the civilian [BR 31].

Although § 87(2)(b) was using profanity towards the officers throughout the incident, his interaction with Sgt. Reyes was a solely verbal argument that did not rise to the level of a violent confrontation. While the interaction may be characterized as stressful, Sgt. Reyes' discourteous language was ultimately a reaction to § 87(2)(b) own profanity and was not used in any attempt to gain control or compliance from § 87(2)(b) § 87(2)(g)

Allegation (J) Force: Police Officer Donovan Bunch used physical force against § 87(2)(b)

The circumstances of this allegation are in dispute.

§ 87(2)(b) testified that as he argued with officers, including PO Bunch, he was gesturing with his hands approximately six inches away from his body [BR 01]. PO Bunch told him to put his hands down, and § 87(2)(b) apologized and complied. § 87(2)(b) soon began gesturing again, to which PO Bunch stated, "Lower your hands," and slapped § 87(2)(b) arm. PO2 then stated, "You're going to jail." PO Bunch handcuffed § 87(2)(b) and he was placed under arrest. PO Fariad was § 87(2)(b) arresting officer.

§ 87(2)(b) did not state that she saw any officers use force against § 87(2)(b) [BR 02].

§ 87(2)(b) stated he had video of the incident but did not specify its origin and did not provide the footage to the investigation.

PO Bunch testified that after § 87(2)(b) got out of the car and was moved to the front of another vehicle, he began yelling and moving his hands as he spoke with PO Bunch, who gestured during his interview that § 87(2)(b) was swinging his hands widely [BR 11]. His hands came within inches of PO Bunch's face several times. PO Bunch instructed § 87(2)(b) to stop moving his hands and keep them at his sides several times. At one point, § 87(2)(b) hand was close to the top of PO Bunch's head. PO Bunch pushed § 87(2)(b) hand down or to the side, although he did not recall where on § 87(2)(b) person he touched. PO Bunch noted his pushing motion was quick because § 87(2)(b) hands were moving quickly.

PO Bunch's BWC video does not capture this allegation [BR 04]. In the video, PO Bunch is seen arguing with § 87(2)(b) who waves his hands and gestures as he speaks. At 4:15 minutes, PO Bunch says, "Do not put your hand next to my face again." § 87(2)(b) continues to wave his hand while speaking and PO Bunch tells him to put his hand down at 4:40 minutes. § 87(2)(b) right side

is not visible in the video, and his hands as well as PO Bunch's are often out of frame. PO Bunch handcuffs § 87(2)(b) immediately thereafter.

Sgt. Reyes, PO Fariad, and PO Young testified that they did not see PO Bunch hit § 87(2)(b) arm [BR 12, 13, 15]. PO Fariad added that he did not recall § 87(2)(b) complaining to him that that had happened at any point.

§ 87(2)(g)

Allegation (K) Abuse of Authority: Police Officer Donovan Bunch searched § 87(2)(b)

Allegation (L) Abuse of Authority: Sergeant Ramon Reyes searched § 87(2)(b)

It is undisputed that PO Bunch searched § 87(2)(b) purse for a police scanner.

Allegation L is being pleaded against Sgt. Reyes since he was on the scene in supervisory capacity and oversaw the actions of his officers.

§ 87(2)(b) stated over the phone that an officer, whom she could only describe as a bald male with light skin said that he was going to check her bag [BR 02]. This occurred after officers had already searched the vehicle. He searched § 87(2)(b) purse. He stated that he saw § 87(2)(b) vehicle near the Wagner NYCHA development, and § 87(2)(b) said that they had passed Wagner as they got off the Third Avenue bridge.

§ 87(2)(b) testified that § 87(2)(b) informed him after the fact that an officer had searched § 87(2)(b) bag [BR 01]. § 87(2)(b) did not witness this, as he had already been arrested.

PO Bunch testified that he spoke with § 87(2)(b) and asked whether there was a police scanner in § 87(2)(b) vehicle that could pick up police radio communications [BR 11]. PO Bunch showed his NYPD-issued radio and noted that a police scanner could be that small but that they came in several sizes. § 87(2)(b) either said no or that she did not think there was. PO Bunch asked § 87(2)(b) if he could look inside her purse, to which § 87(2)(b) said yes. PO Bunch looked inside § 87(2)(b) purse but did not find a police scanner and returned the purse to her. PO Bunch did not recall whether this interaction took place before or after § 87(2)(b) arrest. PO Bunch noted that § 87(2)(b) and the children remained in § 87(2)(b) vehicle for the majority of the incident, but he did not recall at one point they exited the vehicle. PO Bunch noted that he believed there was a police scanner inside of § 87(2)(b) vehicle due to how little time had elapsed between the call for assistance at the location and § 87(2)(b) arrival on scene. PO Bunch did not specifically believe that the police scanner was inside of § 87(2)(b) purse but that her purse was one of the areas he checked for the scanner. PO Bunch did not document § 87(2)(b) consent to checking her purse except on BWC footage. PO Bunch did not recall the phrasing that he used when asking to search § 87(2)(b) purse.

The investigator showed PO Bunch an excerpt from his own BWC footage from 7:30-8:26 minutes which took place after PO Bunch handcuffed § 87(2)(b) [BR 04] (IA 40). In the video, PO Bunch is heard telling § 87(2)(b) "Before you walk out with your purse, I just need to look at it. I have reason to believe he has a police scanner and I just need to make sure it's not in here, okay?" § 87(2)(b) is heard saying, "Okay." PO Bunch is then seen removing items from § 87(2)(b) purse and looking inside of it. PO Bunch testified that he did not recall anything about the dimensions of the purse. PO Bunch noted that he had previously recalled specifically requesting consent from § 87(2)(b) to search her purse. After requesting to view the clip again, PO Bunch stated that he asked if it was okay, and that § 87(2)(b) voluntarily said yes and handed her purse to PO Bunch and did not object to doing so.

PO Fariad stated that he was not aware whether PO Bunch had interacted with § 87(2)(b) [BR 13]. He did not see PO Bunch search § 87(2)(b) purse, looking for a police scanner. To PO Fariad's knowledge there was no reason to believe that § 87(2)(b) had a police scanner in her purse.

PO Young also testified that he was not aware of any interactions between PO Bunch and § 87(2)(b) and was unaware of whether PO Bunch searched § 87(2)(b) purse [BR 12].

The court in *People v Gokey*, 60 NY2d 309 [1983] found that a duffel bag that was within the immediate control or "grabbable area" of a suspect at the time of his arrest could not be subjected to a warrantless search incident to the arrest, unless the circumstances leading to the arrest supported a reasonable belief that the suspect could gain possession of a weapon or be able to destroy evidence located in the bag [BR 26].

In *People v Durant*, 175 AD2d 176 [2d Dept 1991], officers stopped three men, including Mr. Durant, who were seen standing outside with the suspect of a recent assault [BR 43]. The court found that the officers had no reasonable suspicion to believe that Mr. Durant was committing, had committed, or was about to commit a crime simply because he was in the company of an individual who had committed assault.

As per *People v Porter*, 136 AD3d 1344 [4th Dept 2016], once a driver has been arrested for a suspended license or registration, the police may not detain the passenger beyond that point unless the police could establish that the passenger posed a danger [BR 44].

People v Hill, 153 AD3d 413 [1st Dept 2017] notes that consent to search must be a free and unconstrained choice and that official coercion, even if subtle, nullifies apparent consent [BR 32]. Whether an individual's consent to search is voluntary is based on the totality of the circumstances, which include: whether the consent was given while the individual was in police custody; the personal background of the individual, including their age or prior experience with the law; whether the individual offered resistance or was cooperative; and whether the police advised the individual of their right to refuse consent.

The following sections of the NYC Administrative Code enumerate the criteria that officers must meet when seeking to consent to search a person, vehicle, or home [BR 33]. Valid consent to search requires that the officer:

NYC Administrative Code 14-173(a)(1) - articulates, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to the search, and explaining that the search will not be conducted if the person refuses to consent to the search;

NYC Administrative Code 14-173(a)(2) - must obtain consent without threats or promises of any kind being made to the individual;

NYC Administrative Code 14-173(a)(3) - must affirm that the individual understands the information communicated as per subsection (a)(1);

NYC Administrative Code 14-173(a)(4) - must refrain from conducting such search where consent has not been obtained; and

NYC Administrative Code 14-173(a)(5) - must utilize interpreter services as appropriate, including the use of bilingual officers and telephonic interpretation, when seeking consent from an individual who has limited English proficiency.

Additionally, according to NYC Administrative Code 14-173(b)(1), if the officer is equipped with a BWC, the officer must record the aforementioned presentation of the consent to search and the individual's response, whether or not the civilian consents (notwithstanding the other situations whereby officers equipped with BWC are required to record interactions with the public). Per NYC Administrative Code 14-173(b)(2), regardless of the officer having a BWC, the officer must properly document the time, location, and date of such search and the apparent race/ ethnicity, gender, age of the person who was the subject of the search and the officer's name, precinct, and shield number.

According to NYPD Patrol Guide Procedure 202-18, anti-crime supervisors should supervise their officers' performance and ensure that their officers are properly trained regarding their duties as described in the department directives [BR 46].

PO Bunch did not testify to believing that § 87(2)(b) could gain possession of a weapon at any point. He also was unable to articulate any reasonable belief regarding § 87(2)(b) having the alleged police scanner in her purse. § 87(2)(g)

§ 87(2)(g)

PO Bunch testified that he had § 87(2)(b) consent to search her purse. § 87(2)(b) was not in police custody at the time of the search and did not offer resistance to PO Bunch searching her purse. PO Bunch did not testify to having any prior knowledge of § 87(2)(b) background. PO Bunch did not make any threats or promises to § 87(2)(b). However, PO Bunch did not advise § 87(2)(b) of her right to refuse consent to the search. PO Bunch told § 87(2)(b) that he needed to look in her purse to ensure there was no police scanner in it. Although he said, “Okay?”, which PO Bunch stated was a request for consent, he had already phrased the request as a requirement by saying that he “needed” to search the purse. § 87(2)(g) PO Bunch also did not explicitly tell § 87(2)(b) that she had the right to refuse consent as required by the Administrative Code. The investigation has requested the Consent Search Report from the NYPD, which will be added to the case file upon receipt. However, the search is also not documented in PO Bunch’s activity log. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 37].
- PO Bunch has been a member of service for six years and has been a subject in one other CCRB case with one allegation, which remains under active investigation. § 87(2)(g)
- PO Fariad has been a member of service for eight years. He has been a subject in one other CCRB case with two allegations, which remains under active investigation. § 87(2)(g)
- Sgt. Reyes has been a member of service for twelve years. He has been subject in five other CCRB cases with nine allegations, none of which were substantiated. § 87(2)(g)
- PO Young has been a member of service for seven years. He has been a subject in one other CCRB case with one allegation, which remains under active investigation. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- On May 14, 2021, the investigator submitted a request to determine if a Notice of Claim was filed [BR 38]. Confirmation from the Office of the New York City Comptroller will be added to the case file upon receipt.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 3

Investigator: Magdalena Azmitia Investigator Magdalena Azmitia May 15, 2021
Signature Print Title & Name Date

Squad Leader: Olga Golub SL Olga Golub 06/16/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date